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# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:     Dmitry Grebenev

Serial No.     10/784,498

Filing Date:     February 23, 2004

Examiner:     Elmira Mehrmanesh

Art Unit:     2113

Confirmation No.:     2208

Title:     KERNEL-LEVEL METHOD OF FLAGGING PROBLEMS IN APPLICATIONS

**Mail Stop AF**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

## PRE-APPEAL BRIEF REQUEST FOR REVIEW

The following Pre-Appeal Brief Request for Review ("Request") is being filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005 ("OG Notice"). Pursuant to the OG Notice, this Request is being filed concurrently with a Notice of Appeal. Applicant respectfully requests reconsideration of the application in light of the remarks set forth below.

## REMARKS

Previously, Applicant received a Final Office Action dated September 20, 2007 ("*Office Action*") and an Advisory Action dated December 02, 2007 ("*Advisory Action*"). At the time of the *Office Action*, Claims 1-20 were pending, of which, the Examiner rejected Claims 1-20 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,684,945 to Chen et al. (*Chen*). Applicant seeks review in this Request of the rejection of Claim 2. Applicant does not seek review in this Request of the rejections of Claims 1 and 3-20. Applicant contends that the rejections of Claim 2 contains clear legal and factual deficiencies as described below. Accordingly, Applicant requests a finding that the rejection of Claim 2 is improper and that Claim 2 is allowable.

Claim 2 is directed to a method of identifying problems in applications that includes, "monitoring at a kernel level system resource usage of one or more running applications . . . wherein the system resource usage comprises one or more processes that the one or more running applications have spawned." The Examiner contends that *Chen* discloses these limitations and points to sections of *Chen* which recite, "[the xmservd daemon refreshes itself] by spawning another copy of itself via inetd and killing itself. When this happens . . . all data consumers must request resynchronizing with the spawned daemon to continue their monitoring." See *Office Action*, page 3 (citing *Chen*, col. 37, lines 55-63) Applicants respectfully contend that this argument is entirely without merit.

"[R]esynchronizing with a spawned daemon" does not disclose "[identifying from the monitored system usage an application] . . . wherein the system resource usage comprises one or more processes that the one or more running applications have spawned" as required by Claim 2. Applicant surmises that the Examiner simply cited this passage because it used the word, "spawned." To the extent that the Examiner intends to maintain this rejection, Applicant respectfully requests the Examiner to explain how "resynchronizing with a spawned daemon" discloses the limitations of Claim 2.

Moreover, *Chen* discloses that "[the xmservd daemon] spawns a copy of itself" while Claim 2 states, "the system resource usage comprises one or more processes that the one or more running applications have spawned." Even assuming for the sake of argument that the "individual processes" of *Chen* disclose the "running applications" of Claim 2 as the Examiner contends; see *Office Action* page 2 (citing *Chen* col. 26, lines 49-52), the xmservd
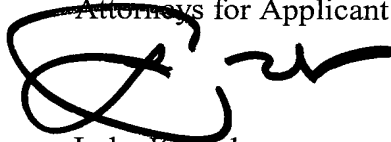
daemon is spawned by **itself.** It is not spawned by the "individual processes" identified by the Examiner. Thus, the spawned xmservd daemon of *Chen* does not disclose the "one or more processes that the one or more running applications have spawned" as required by Claim 2. For at least these reasons, Applicant respectfully contends that the rejection of Claim 2 is improper and that Claim 2 is allowable.

## CONCLUSION

As the rejections of Claim 2 contains clear legal and factual deficiencies, Applicant respectfully requests a finding of allowance of Claim 2. If the PTO determines that an interview is appropriate, Applicant would appreciate the opportunity to participate in such an interview. To the extent necessary, the Commissioner is hereby authorized to charge any required fees or credit any overpayments to Deposit Account No. **02-0384** of **Baker Botts L.L.P.**

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicant

Luke K. Pedersen
Reg. No. 45,003
PHONE: (214) 953-6655

Date: 1/18/08

CORRESPONDENCE ADDRESS:

Customer Number: **05073**